IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 242 of 2004

with

CIVIL APPLICATION No 1770 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BRUNED LAZARO SALILLAS

Versus

HON. SECRETARY, KATHIAWAR NIRASHRIT BALASHRAM

Appearance:

1. First Appeal No. 242 of 2004

M/S THAKKAR ASSOC. for Petitioner No. 1-2

MR PARTHIV B SHAH for Respondent No. 1

MR DIPEN DESAI, AGP for Respondent No.2

CORAM : HON'BLE MR.JUSTICE M.C.PATEL

Date of decision: 17/03/2004

ORAL JUDGEMENT

This appeal under Section 47-A of the Guardians and Wards Act, 1890 is directed against the judgement and order dated 29.11.2003 passed by the Learned Joint District Judge, Rajkot in Civil Misc. Application No. 26 of 2003. The prayer made in the said application was as follows:-

> "A. That the applicants Mr. Bruned Lazaro Salillas and Mrs. Ramirez M Angeles residing at C/Mar, 66, Town : 43713 Sant Jaume dels Domenys (Tarragona), SPAIN be appointed as the guardian of the person of the ward SANGITA born on 14.3.2001 and the permission be granted to remove the said ward SANGITA out of the jurisdiction of this Hon'ble court. To their respective country SPAIN."

2. The appellants are the citizens of Spain. The appellant no.1 Mr.Bruned Lazaro Salillas is working as a Petrol Pump attendant and the appellant no.2 Mrs. Ramirez M Angeles is a housewife. They have no children of their own. They were desirous of adopting an Indian child and got in touch with Kathiawar Nirashrit Balashram, Rajkot and selected an abandoned child named Sangita. The said child was admitted to the Balashram on 30.7.2001. The appellants decided to adopt the said child. They, therefore, filed the aforesaid Civil Application, through their power of attorney holder Ashaben T Shah, Superintendent of Kathiawar Nirashrit Balashram, under the provisions of the Guardians and Wards Act praying that they be appointed as guardian of the person of the minor abandoned child Sangita and that they be granted permission to remove the child out of the jurisdiction of the Court to Spain.

3. Alongwith the said Misc. Civil Application, the following documents were produced in compliance with the directions issued by the Central Government to be followed in the case of an inter-country adoption:-

1. Civil Misc. Application No.26/2003 before Hon'ble Dist. Judge, Rajkot.
2. Home Study Report.
3. Home Study Report in Spanish language.
4. Photographs of Adoptive parents.
5. Marriage Certificate
6. Marriage Certificate in Spanish Language.
7. Declaration of Adoptive Parents about health and medical certificates.
8. Declaration of Adoptive Parents undertaking to

send progress reports of child.
9. Certificate of employment about Mr.Bruned.
10. -Do- in Spanish Language.
11. Certificate of employment about Mrs.Ramires.
12. -Do- in Spanish Language.
13. Certificates by Taxation office and Bank.
14. Declaration of willingness by the Adoptive parents.
15. Undertaking by Spanish Agency
16. General Power of Attorney.
17. Certificate by Spanish Agency with reference to fulfilling the requirement of capacity by Spanish legislation.
18. Medical Certificate of Official Medical Association of Spain about infertility of Mr.Bruned.
19. -Do- in Spanish Language.
20. Copy of passport of Mr.Bruned.
21. Copy of passport of Mrs.Angeles.
22. Certificate by Ministry of Justice about Mr.Bruned.
23. -Do- in Spanish Language.
24. Certificate by Ministry of Justice about Mrs.Angeles.
25. -Do- in Spanish Language.
26. Character Certificate by Friends, co-workers and neighbours about Adoptive Parents.
27. Certificate by Ministry of Interior.
28. -Do- in Spanish Language.
29. Certificate of Clearance by Voluntary Co-ordinating Agency for adoption.
30. Child approval by Adoptive Parents.
31. Child Study Form of child "Sangita".
32. Medical Reports of child "Sangita".
33. No Objection Certificate issued by Central Adoption Resource Agency (CARA)
34. Certificate of Recognition by CARA.
35. Index of Enlisted Foreign Agencies/Govt. Department for Inter Country Adoption.
36. Update Report by Spanish Agency.
37. Oral Evidence of Ashaben T Shah.
38. Consent letter by Kathiawad Nirashrit Balashram.
39. Resolution by Kathiawad Nirashrit Balashram about giving child "Sangita" in Adoption.
40. Affidavit of Mr.Kishor Parmar from Indian Council of Social Welfare.
41. Recommendation by Indian Council of Social Welfare.
42. Judgement of Trial Court.

4. The notice of the application was issued to the

Indian Council of Social Welfare, Gujarat State Branch, Ahmedabad, which is the scrutinising agency. An affidavit was filed on behalf of the said agency supporting the application made by the appellants.

5. Thus, it appears that all the guidelines issued by the Central Government in this behalf were fulfilled. However, the Learned Judge dismissed the application. The appellants have, therefore, filed this appeal challenging the said order dismissing their application.

6. As stated earlier, all the guidelines issued by the Central Government were duly complied with and the documents produced by the appellants show that they were fit to adopt the child and that their desire to adopt the child was sincere, bonafide and genuine. However, the learned Judge dismissed the application on two grounds, firstly, that though the appellant no.1 had been working as Petrol Pump Attendant for many years, he was not settled in life properly because even at the age of 45 years, he was in search of a new job. It is pertinent to observe that in western societies, people do not stick to the same job all their life. The second ground given by the learned Judge was the difference in the ages of the appellants and the child. Now the difference in ages is within the age criteria fixed by the Management Committee of the Central Adoption Resorce Agency by its order dated 16.10.2003. The appellants have filed Civil Application No. 1770 of 2004 praying for leave to produce additional evidence in the form of an affidavit. The said application is allowed and the affidavit is ordered to be taken on record. It is clear from the affidavit and their letter dated 13.3.2004 that the appellants are aware that the child is a minor child suffering from minor Thalassaemia. The evidence on record shows that Indian parents are not available to adopt such a child. In the circumstances, I am satisfied that it will be in the interest of the child if she is given in adoption to the appellants.

7. The appeal is, therefore, allowed. The judgement and order dated 29.11.2003 passed by the Learned Joint District Judge, Rajkot District, Rajkot in Civil Misc. Application No.26 of 2003 is set aside and the matter is remanded to the District Court. The learned District Judge or the Judge to whom the matter is assigned by the District Judge, shall pass formal appropriate orders allowing the said Civil Misc. Application and granting the prayer as made by the appellant in the said application on usual terms and conditions without any delay. The R&P shall be sent back immediately. There

shall be no order as to costs. Direct Service permitted.

(M.C.Patel, J)
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